

of the local community and its resources.

(b) The SBA District Office will submit a recommendation, with any supporting materials, within 30 days of the end of the comment period to the AA/FA, who will make the final decision within 30 days of his or her receipt of the District Office's recommendation. In making its decision, SBA will consider all information submitted to it, as well as the currency of the expanding CDC's portfolio, including the default rate.

§ 120.838 Expiration of existing, temporary expansions.

All existing, temporary expansions of Areas of Operation shall expire 6 months after March 1, 1996, unless a CDC applies for permanent expansion before the expiration date.

§ 120.839 Case-by-case extensions.

(a) A CDC may apply to make an individual loan for a Project outside its Area of Operations to the District Office serving the area in which the Project will be located if:

(1) The applicant CDC has previously assisted the business to obtain a 504 loan;

(2) The applicant small business or CDC can document in writing to the AA/FA specific circumstances that would prevent the existing CDC or CDCs serving the area from assisting the business adequately; or

(3) The existing CDC or CDCs serving the area agree to permit the applicant CDC to make the loan.

(b) The applicant CDC must demonstrate that it adequately can service the loan.

(c) The AA/FA may approve the request for good cause shown.

[61 FR 3235, Jan. 31, 1996; 61 FR 7986, Mar. 1, 1996]

ACCREDITED LENDERS PROGRAM (ALP)

§ 120.840 Accredited Lenders Program.

The SBA may designate a CDC as an Accredited Lender. SBA will provide an Accredited Lender with expedited loan processing or servicing action.

(a) *Applications.* CDCs may apply to the SBA field office with which it is most active. The SBA office will send its recommendation and the application to the AA/FA for final decision.

(b) *Eligibility.* In order to be eligible to receive Accredited Lender status, a CDC must have been an active participant in the 504 loan program for not less than the preceding 12 months. In evaluating an application to be an Accredited Lender, SBA will consider all relevant factors, including:

(1) The CDC's ability to work with the local SBA office;

(2) The quality of past performance; and

(3) The quality of the loan portfolio, including the default rate.

(c) *Term of designation.* CDCs will be designated as ALPs for a two year period, and are eligible to renew the designation for additional two year periods.

(d) *Suspension and revocation.* The AA/FA may suspend or revoke ALP designation upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA or violations of applicable statutes, regulations or published SBA policies and procedures. An ALP may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

PREMIER CERTIFIED LENDERS PROGRAM

§ 120.845 Premier Certified Lenders Program (PCLP).

The SBA has established a pilot program ("Program") to designate a number of CDCs as Premier Certified Lenders ("Premier CDCs"), and to authorize them to approve, close, service, foreclose, litigate, and liquidate 504 loans subject to SBA regulations, procedures, and policies. A Premier CDC's authority to approve loans under the Program is subject to SBA's determination that the loan and Borrower meet SBA's eligibility requirements.

(a) *PCLP Loan Approvals.* A Premier CDC notifies SBA of its approval of a PCLP loan by submitting appropriate documentation to SBA's loan processing center. SBA will notify the Premier CDC of the SBA loan number (if it does not identify a problem with eligibility, and funds are available).

(b) *Premier CDC Exposure.* A Premier CDC must reimburse SBA for 10% of any loss (including attorney's fees and litigation costs and expenses) incurred by SBA as a result of a default by the Premier CDC on a Debenture issued under the PCLP ("Exposure").

(c) *Loss Reserve.* A Premier CDC must establish a loss reserve to provide funds to pay its Exposure to SBA.

(1) *Assets.* (i) A Premier CDC's loss reserve must be composed of any combination of:

(A) Segregated funds on deposit in one or more federally insured depository institutions in which the Premier CDC has granted to SBA, in a manner acceptable to SBA, a first priority perfected security interest to secure the Premier CDC's obligations to SBA under the PCLP; or

(B) Irrevocable letters of credit.

(ii) SBA must be named as the beneficiary of all letters of credit. A Premier CDC's loss reserve deposits in an institution may exceed the institution's insured amount, but only if the institution is "well-capitalized" as defined in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103) ("well capitalized bank").

(iii) A loss reserve letter of credit must:

(A) Be issued by a well-capitalized bank;

(B) Have a term equal to or longer than the maturity of the PCLP loan which triggered the requirement for the Premier CDC to contribute to the loss reserve;

(C) Be irrevocable;

(D) Be otherwise acceptable to the SBA;

(E) Have an issuer who remains well-capitalized throughout the term of the letter of credit, or SBA may require an additional loss reserve contribution by the contributing Premier CDC.

(2) *Contributions.* A Premier CDC's loss reserve must total 1 percent of the

Debentures it issues under the PCLP Program. A Premier CDC must contribute 50 percent of the required loss reserve attributable to each PCLP loan when the Debenture it issues to fund the PCLP loan is closed, 25 percent within 1 year after the Debenture is closed, and 25 percent within 2 years after the Debenture is closed.

(3) *Reimbursement.* SBA determines a Premier CDC's Exposure on a loan and withdraws the amount necessary to cover the Exposure. If, after full use of any assets in the loss reserve, there are not enough loss reserve assets to cover a Premier CDC's Exposure, the Premier CDC must pay SBA any difference between the Exposure and the loss reserve assets withdrawn by SBA to cover the Exposure within 45 days of a demand for payment by SBA.

(4) *Replenishment.* If SBA withdraws assets from the loss reserve to cover a Premier CDC's Exposure, the Premier CDC must replace the withdrawn loss reserve assets within 30 days of the withdrawal with contributions equal to or greater than the amount of the assets withdrawn.

(5) *Withdrawal.* A Premier CDC may withdraw loss reserve assets attributable to any repaid Debenture upon written approval by SBA.

(d) *Review.* SBA will review a Premier CDC's PCLP loans annually.

(e) *Suspension and revocation.* The AA/FA may suspend or revoke a CDC's Premier designation upon written notice stating the reasons for the suspension or revocation at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include loan performance unacceptable to SBA, failure to meet loss reserve or eligibility criteria, or violations of applicable statutes, regulations, or published SBA policies and procedures. A Premier CDC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

(f) *Applications.* A CDC may obtain information concerning this pilot program from the Office of Program Development in the Office of Financial Assistance at SBA's Headquarters. A

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CDC may submit its application to the SBA field office in which it is most active. The SBA field office will send the application with its recommendation to the AA/FA for a final decision.

(g) *Acceptance into Program.* When determining a CDC's application, SBA will consider the CDC's ability to work with the local SBA office and the quality of past performance.

(h) *Program period.* The PCLP pilot program ends on October 1, 2000.

[64 FR 26274, May 14, 1999]

ASSOCIATE DEVELOPMENT COMPANIES (ADCs)

§ 120.850 ADC functions.

(a) An ADC must support local economic development efforts. An ADC may package, close, and service loans for a CDC under a written contract approved by SBA. Such contracts must meet Service Provider criteria, and specify the rights and responsibilities of the parties (including payment terms). The CDC remains solely responsible to SBA for the processing, closing, and servicing of the loan. It may not charge the Borrower a higher fee because it is using the ADC's services.

(b) An ADC must operate in accordance with statutes, regulations, policy notices, SBA's Standard Operating Procedures (SOPs), and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records required by SBA.

§ 120.851 ADC eligibility and operating requirements.

(a) An ADC must demonstrate to SBA and maintain the following:

- (1) Adequate management ability;
- (2) A Board of Directors meeting at least quarterly and chosen from the membership by the members;
- (3) A professional staff, including at least one qualified full-time professional with small business lending experience available during regular business hours; and
- (4) A budget or financial statements showing the financial capability and

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funding to sustain continuing operations.

(b) An ADC may contract out for staff services only if SBA gives prior approval. The contract, subject to SBA audit, may not be self-serving, and compensation must be reasonable and customary.

§ 120.852 Suspension and revocation of ADCs.

SBA may require corrective action, or the AA/FA may suspend or revoke ADC status upon written notice stating the reasons therefore at least 10 business days prior to the effective date of the suspension or revocation. Reasons for suspension or revocation may include violations of applicable statutes, regulations or published SBA policies and procedures. An ADC may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA shall remain in effect pending resolution of the appeal.

ETHICAL REQUIREMENTS

§ 120.855 CDC and ADC ethical requirements.

CDCs, ADCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of §120.140. In addition, they are subject to the following:

(a) Any benefit flowing to an Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from engaging in a business relationship with the CDC and/or the Borrower in the regular course of business, including providing interim financing or Third-Party loans); and

(b) Unless waived by SBA for good cause, an Associate may not be an officer, director, or manager of more than one CDC or ADC (except that the membership or Board of Directors of a broader-based CDC may include a member or director of a local CDC within its Area of Operations).